

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

**Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii**

FILE NO.: CDUA OA-3417
REF: OCCL: MC
Acceptance Date: May 9, 2007
180 Exp. Date: November 5, 2007

October 12, 2007

REGARDING: Non-commercial Pier

APPLICANT: Mr. Kenton Eldridge
298 Wailupe Circle, Honolulu, HI 96821

AGENT: Mary O'Leary, AICP, Belt Collins Ltd., 2153 North King St, Suite
200, Honolulu, HI 96819

LANDOWNER: State of Hawaii

LOCATION: Wailupe, Honolulu, O'ahu

TMK: (1) 3-6-01:21

AREA OF USE: 270 square feet

SUBZONE: Resource (submerged)

DESCRIPTION OF AREA AND CURRENT USE:

The project site, TMK (1) 3-6-01:21298 Wailupe Circle, is located on Maunalua Bay in a completely developed residential neighborhood off of Kalaniana'ole Highway in east Honolulu (**Exhibit 1**). The submerged lands are located within the State Land Use Conservation District, Resource Subzone; the subject parcel itself is not.

The Wailupe Peninsula was once a Hawaiian fishpond. Beginning in 1948 developers enclosed the fishpond with a lava stone wall, dredged a channel around the fishpond, and used the coral rubble from the dredging to fill the pond. It was then developed as a residential subdivision.

The 15,878 square-foot subject property is located on the southeastern corner of the peninsula (**Exhibit 2**). It contains a single family residence constructed in 1951. The

subject property is zoned residential. The original lava wall runs along the shore, and a wood boardwalk runs on top of the wall (**Exhibit 3a**).

The reef flat immediately offshore is shallow, muddy and dominated by algae. Reef corals are essentially absent from the area (**Exhibit 3b**). The dredged channel lies approximately 20 feet offshore.

There are 22 piers on the 31 ocean-front properties on Wailupe Peninsula.

Public access to ocean is via Wailupe Beach Park to the west of the peninsula and the right-of-way to the east. The reef margin fronting the shore is used primarily by pole fishers during low tide. Other types of gathering and fishing are rarely practiced in the reef flat fronting the subject parcel, although there is limited seaweed harvesting on other parts of the reef in the vicinity.

The channel itself is used primarily by surfers to gain access to breaks makai of the dredged channel. Kayakers are occasionally present, while motorized boats are rare due to the narrowness of the nearby launching ramp. Residents with piers will use the channel for swimming.

DLNR Land Division certified the shoreline on December 22, 2006 (ref. OA-1107).

PROPOSED USE:

The landowner proposes to build a new 270 square foot private recreational pier at 298 Wailupe Circle in Honolulu (**Exhibit 4**). The landward portions of the property lie in the State Land Use Urban District. The bulk of the pier will lie makai of the shoreline, in submerged lands that are in the Resource Subzone of the State Conservation District.

The proposed pier will measure 27' by 10', and be composed of a wood/fiber reinforced plastic. It will be supported on concrete pylons. The pier will be anchored to an existing bulkhead that runs parallel to and mauka of the certified shoreline. It will extend outward to the dredged channel in order to provide access for swimming, snorkeling, and other ocean related activities.

The pier design consists of transverse Trex decking atop longitudinal wood beams that will be supported on the landward side by a concrete abutment anchored into the existing seawall (**Exhibit 5**). The proposed pier will be similar in size, design, and appearance to the other 22 piers that exist on the 31 ocean-front properties on the Wailupe Peninsula (**Exhibit 6**).

SUMMARY OF COMMENTS:

The application was referred to the following agencies for their review and comment: the State: Department of Land and Natural Resources (DLNR) - O'ahu Board Member, O'ahu District Land Office, Division of Aquatic Resources, Historic Preservation

Division, and Division of Boating and Ocean Recreation; the Office of Hawaiian Affairs; the Department of Business, Economic Development, and Tourism (DBEDT) – Office of Planning, Coastal Zone Management Program; the Kuli'ou'ou-Kalani Iki Neighborhood Board No. 2; and the Department of Health Office of Environmental Quality Control. A copy of the application was also available for review at the *Āina Haina Community Library*.

The CDUA and Draft Environmental Assessment (DEA) were published in the May 8, 2007 issue of the Office of Environmental Quality Control (OEQC)'s *Environmental Notice*.

Comments were received from the following agencies and are summarized as follows:

Office of Environmental Quality Control (OEQC)

OEQC asked that the DEA discuss the following:

- Noise impacts to adjacent properties from use of the pier
- Impacts to ocean waters from gas and oil residue if the pier is used to anchor a boat.
- Impacts to coastal waters from preservatives used to treat the Douglas fir beams once they begin to deteriorate.
- An alternative alignment where the pier is moved to the Koko Head end of the property and a four-foot easement dedicated along the Koko Head side of the property for public use of the pier. The design for this could include fencing, landscaping, and a locked gate to protect the Eldridge residence. This should refer to the East Honolulu Sustainable Communities Plan.
- A cost benefit analysis for four alternative designs regarding the ability of the designs to withstand hurricane or tsunami events.

Applicant's Response

The applicant offers the following:

- *Noise impacts are discussed in §2.6 on page 8. Noise impacts will be generally limited to conversation among persons using the pier. The applicant does not intend to use the pier to anchor a boat. Given the shallowness of the substrate, the lack of mooring cleats, and the frequent rough swells in the area future mooring of a boat would be difficult – and so no noise impacts from motorized boats are expected.*
- *A 2001 publication by the US Department of Agriculture titled Guide for Minimizing the Effect of Preservation-Treated Wood on Sensitive Environments concludes: Although treated wood does contain chemicals that are potentially toxic, studies indicate that there are no measurable impacts on aquatic organisms if the wood is properly treated and installed. Because the wood beams will not be submerged, and will be covered by decking, the applicant estimates that they should last in excess of 50 years.*

- *The pier decking will be composed of a plastic-wood composite that contains no chemical preservatives.*
- *The dedication of a four-foot wide easement is not consistent with the City's policy for acquiring new rights-of-way. It is too far from the highway to warrant an exclusive right of way, and this shoreline does not have a high recreational value.*
- *Cost estimates were provided in Appendix D of the EA. The applicant did not do a cost-benefit analysis for hurricane or tsunami conditions, as these events are so extreme that the forces resulting from them would be impractical to design for.*

DLNR Land Division

Land Division notes that the law allowing the Board to issue direct leases for private non-commercial piers will have sunset on June 30, 2007. Any lease for a pier after this date will require the lessee to post a sign on the pier indicating the public's right to use the pier (HRS § 171-36 (a) (9)).

Applicant's Response

The applicant acknowledges the obligation to post a sign on the pier pursuant to Act 261, SLH 2000, as amended.

DLNR Division of Boating and Ocean Recreation

No Comments.

Chris Cramer, Community Resident

Mr. Cramer opposes the proposed pier for the following reasons:

- The area proposed has no legal connection to the landowners. They have no legal title to the ocean. Mr. Cramer does not believe that the public will be allowed to use the pier, as other piers in the neighborhood have numerous No Trespassing and Keep Out signs on them.
- Wailupe is an ancient fishing ground that contained a massive fishpond until the 1950's. The reef shelf where the pier is being proposed contains numerous fish, especially 'aweoweo. Blasting massive concrete structures in the reef will destroy this habitat and increase sedimentation.
- Building codes and SMA codes should be amended to deny structures from being built close to the ocean.
- Other piers in Maunalua Bay have become safety hazards as they age.
- Other piers in the area have been erected illegally and act as illegal boat harbors without any DLNR enforcement.

Applicant's Response

The applicant offers the following:

- *Landowners are, in fact, legally entitled to apply for pier leases.*
- *The applicant does not intend to erect a sign on the proposed pier to discourage public access. There is, however, little that the landowner can do in regards to the actions of their neighbors.*
- *An assessment of the marine environment is included in the Final EA. It showed that the biotic composition of the entire area is a algae-covered limestone platform. Reef corals are absent.*
- *There is no blasting being proposed.*
- *The construction of the pier is allowed subject to approval by the Board of Land and Natural Resources, and is thus not a violation of the building codes.*
- *The project area is seaward of the shoreline, and thus not in the County's Special Management Area.*
- *The applicant has no intention of abandoning the pier.*
- *State law mandates that new piers be accessible to the public. It is not illegal to dock boats at these piers; however, the shallow reef shelf and rough seas are not conducive to mooring boats at this location.*

Neighborhood Board No. 2

Jeannine Johnson, representative of Subdistrict 7, states that it is DLNR's responsibility to deny the permit for the pier based upon the following:

- The concrete pilings will destroy fish habitat and significantly increase sedimentation.
- Other residents post Keep Out signs, have fences on the pier, protect them with guard dogs, and behave in a threatening manner to keep people off the beach.¹
- The OCCL's Guide *A Participant's Guide to the Special Management Area Permit Process in the State of Hawai'i*² states that no development should be approved that has a substantial adverse ecological impact; that the authority (sic) shall seek to minimize development that reduces public access to tidal and submerged lands; and that the authority should limit development which would adversely impact water quality, existing areas of open water free of structures, and potential and existing fishing grounds.

Applicant's Response

The applicant's responses mirrors those to community member Chris Cramer, above.

US Department of the Army Engineering District

¹ OCCL notes that there is no beach adjacent to the subject parcel.

² OCCL notes that the Representative is quoting from a County document relating to County permits, and not an OCCL publication.

The Regulatory Branch noted that the Corps will evaluate the project in accordance with Federal Regulations at 33 CFR Part 330, Appendix A, Paragraphs B.18 (NWP#18, Minor Discharges) and B.19 (NWP#19, Minor Dredging).

West Maunalua Bay is a waterbody included in the Section 303(d) List of the Clean Water Act. The authorization will also require an individual Water Quality Certification from the Clean Water Branch, Hawai'i State Department of Health.

Applicant's Response

The Applicant acknowledges that the proposal will need a Department of Army permit under the authority of either Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act, as well as an individual Water Quality Certification from the Clean Water Branch of the Hawai'i State Department of Health.

The applicant's agent met with representatives of the US Army Engineering District in August 2006. They applied for the necessary permits; the comment deadline for these is September 29, 2007. They also provided OCCL with a Coastal Zone Management (CZM) federal consistency general conditions concurrence from May 11, 2007. This concurrence was not an endorsement.

Office of Hawaiian Affairs

No comments.

ANALYSIS:

After reviewing the application, the Department notified the applicant:

1. That the project was an identified use within the Conservation District according to Hawai'i Administrative Rules (HAR), §13-5-25 *Identified land uses in the protective subzone*, R-6 MARINE CONSTRUCTION, (D-1); that this use required a Permit from the Board of Land and Natural Resources (BLNR); and that the final decision as to whether to grant or deny the permit lies with the BLNR.
2. That a public hearing pursuant to HAR §13-5-40 was not required.
3. That, pursuant to HAR § 13-5-31 *Permit applications*, the permit required that an environmental assessment be carried out.

The draft environmental assessment (DEA) was published in the May 8, 2007 issue of the Office of Environmental Quality Control (OEQC)'s *Environmental Notice*.

A Finding of No Significant Impact (FONSI) was published in the OEQC's *Environmental Notice* on August 8, 2007. There were no challenges to the FONSI.

4. That the proposed pier was makai of the certified shoreline and thus outside the Special Management Area.

SECTION 13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Hawai'i Administrative Rules (HAR). § 13-5-30.

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The purpose of the Conservation district is to regulate land uses for the purpose of conserving, protecting, and preserving the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

Staff is of the opinion that piers in this section of the coast are a sustainable use.

2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of the area. Wailupe Peninsula is a man-made construct. The residential areas are fully developed, the shoreline has been completely hardened, and the near shore areas dredged.

Staff believes that pier development in this area is an acceptable use of the natural resources of the Bay and does not appear to be inconsistent with the existing environment.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205, HRS, entitled "Coastal Zone Management," where applicable.*

Chapter 205A, HRS encompasses most land, water and marine areas of the State. Section 205A-2 (a) (5) (a) states that it is a policy of the Coastal Zone Management, to provide public or private facilities and improvements important to the State's economy in suitable locations. The Wailupe Peninsula is a suitable location for either public or private piers and other similar structures. Pier development on this peninsula does not affect beach processes or significantly affect public access.

4. *The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.*

The area off Wailupe Peninsula is not heavily used for ocean recreation. Surfers and pole fishers are the primary users. Residents also use the area for swimming and small boat launching. There are currently 22 piers on the peninsula. The proposed pier should not adversely affect recreational users, nor should it impact the natural resources of the area. Therefore, the use is not inconsistent with the existing environment.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The existing pier and structures in the Wailupe area are a compatible use of the region and are an appropriate use of submerged land given the physical conditions and historic uses of the area.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

The proposed pier will be one of many small piers in the area and Staff believes the effect of this proposed action will be minimal on the natural beauty and open space characteristics of this stretch of coast.

7. *Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.*

No subdivision of land is proposed.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

It is staff's opinion that the proposed project will not be detrimental to the public health, safety and welfare.

DISCUSSION:

The applicant proposes to build a 270 square foot pier extending from his property on the Wailupe peninsula to a dredged channel approximately 20' offshore. The primary purpose of the pier is to provide swimmers and snorkelers access to the channel. It is not designed to anchor boats, although such a use will be possible. In accordance with state law, the landowner will be required to post a sign allowing for public use of the pier as a condition of any lease agreement with the state.

The shoreline around Wailupe has been extensively altered by human activity. It was once one of the larger fishponds on Maunalua Bay. In 1948 it was filled and developed as a residential subdivision. The shoreline was hardened with a lava rock wall, a channel

was dredged along the new peninsula, and rubble from the dredging was used as fill in the fishpond.

Today the peninsula is completely developed as a residential subdivision. The near shore substrata is an algae-covered limestone slab. Recreational use of the ocean is limited. Pole fishermen use the nearshore reef flat; snorkelers, swimmers, spearfishers, and kayakers occasionally use the channel; and surfers use the breaks on the outside of the channel. With the exception of the surfers, most users are residents of the area.

Public access to ocean is via Wailupe Beach Park to the west of the peninsula and the right-of-way to the east.

OCCL received two letters of opposition to the project. Opposition falls under two main categories: 1) Concern about the ecological impact of the pier, and 2) Consternation at the alleged unsocial and hostile behavior from other pier owners in Wailupe.

On the first, OCCL notes that the nearshore waters have been significantly impacted by human activities since 1948. The shoreline is completely hardened, and there is no beach along the wall even at low tide, so OCCL would expect little impact on coastal processes from the proposal. The substrata is algae-dominated, and marine surveys do not indicate the presence of corals or significant fish stocks in the near-shore waters. OCCL also notes that 22 of the 31 coastal properties have small piers offshore, and it appears that the area is suitable for use by recreational piers.

OCCL does not anticipate that an additional small pier will have any significant environmental impact at this point.

Residents have also pointed out that some of the neighboring parcels post no-trespassing signs, fence their piers, and have guard dogs to keep others off. OCCL notes that the laws that allowed for these piers have expired, and that any new leases will require that piers have signs acknowledging the public's right to use the pier. OCCL will recommend that this also be one of the conditions of granting this permit; violations of this condition would render the permit null and void.

OCCL has no objections to the proposed pier,

RECOMMENDATION:

Based on the preceding analysis, staff therefore recommends that the Board of Land and Natural Resources APPROVE this application for pier construction at 298 Wailupe Circle, Honolulu, TMK (1) 3-6-01:21, subject to the following conditions:

- 1) The applicant shall comply with all applicable statutes ordinances, rules, and regulations of the Federal, State and County governments, and the applicable parts of Section 13-5-42, Hawai'i Administrative Rules;

- 2) The applicant, their successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, their successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
- 3) The applicant shall comply with all applicable Department of Health administrative rules;
- 4) All mitigation measures set forth in the application materials, and in the final environmental assessment for this project are hereby incorporated as conditions of the permit;
- 5) Any work done on the land shall be initiated within one year of the approval of such use, and unless otherwise authorized be completed within three years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
- 6) Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction and grading plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
- 7) In issuing this permit, the Department has relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
- 8) Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
- 9) The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawai'i, and by Hawai'i statutory and case law;
- 10) During construction, appropriate mitigation measures shall be implemented to minimize impacts to the marine environment, off-site roadways, utilities, and public facilities;

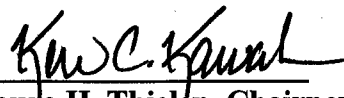
- 11) Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
- 12) The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
- 13) The applicant shall obtain a land disposition from the O`ahu District Land Office for the use of State land;
- 14) The applicant shall provide documentation (e.g., book and page, or document number) that the permit approval has been placed in recordable form as a part of a deed instrument
- 15) Pursuant to HRS § 171-36 (a) (9) and *Act 261, SLH 2000, as amended*, the applicant will post a sign indicating the public's right to use the pier
- 16) Other terms and conditions as may be prescribed by the Chairperson; and
- 17) Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,



Michael Cain
Staff Planner

Approved for submittal

for 
Laura H. Thielen, Chairperson
Board of Land and Natural Resources



© 2007 Google™

© 2007 Sanborn
© 2007 Europa Technologies

EXHIBIT I



© 2007 Google™

© 2007 Sanborn
© 2007 Europa Technologies

EXHIBIT 2

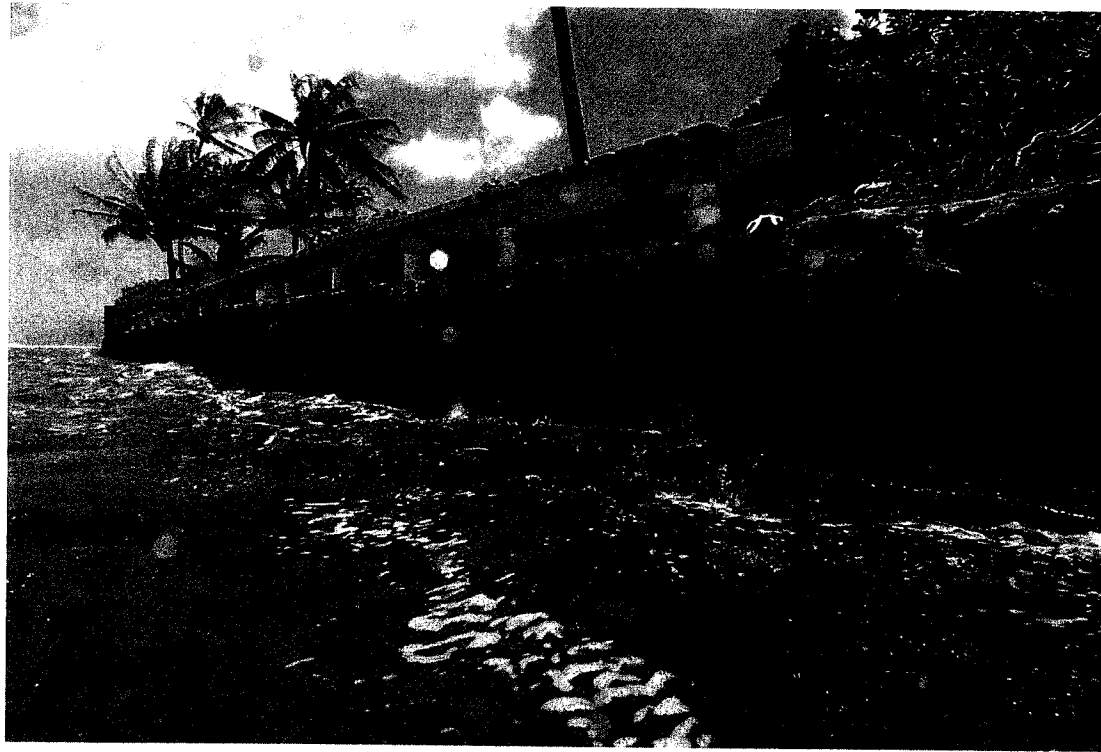


EXHIBIT 3



Shoreline wall and ledge fronting Eldridge Residence on Wailupe Peninsula looking south (top). Wooden boardwalk to be removed. Bottom photo shows rock-rubble bottom at base of shoreline wall. Water depth is approximately 1 foot.

©2007 Belt Collins Hawaii Ltd.



Source:
Marine Research Consultants Inc. August 2006.
*Assessment of the Marine Environment in the Vicinity of
the Eldridge Residence Wailupe Peninsula, Oahu, Hawaii.*

Figure 5 GENERAL LOCATION OF PROPOSED PIER

Environmental Assessment
Proposed Recreational Pier
Prepared for Mr. Kenton Eldridge
Prepared by Belt Collins Hawaii—June 2007

THIS WORK WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF HAWAII. I HEREBY CERTIFY THAT I AM A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF HAWAII. I HEREBY CERTIFY THAT I AM A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF HAWAII.



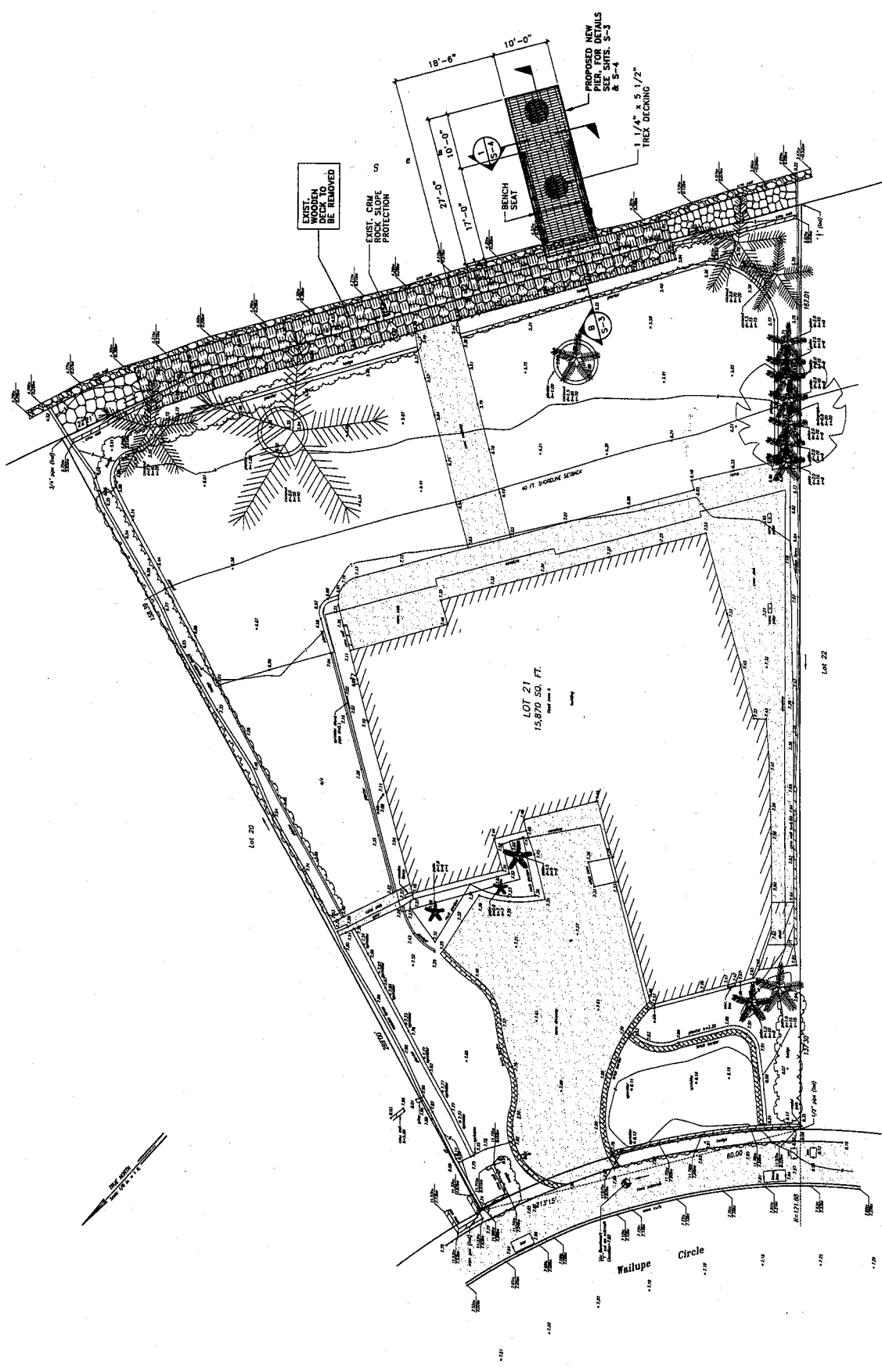
Arnold T. Okubo & Associates, Inc.
CONSULTING ENGINEERS
OAHU, HAWAII



NEW PIER
298 WAILUPE CIRCLE
HONOLULU, OAHU, HAWAII
T.M.K.: 3-8-01:21
SITE PLAN

DESIGNED BY: ATO	CHECKED BY: ATO
DRAWN BY: ATO	CHECKED BY: ATO
DATE:	SHEET NUMBER: S-2
DATE:	OF SHEETS: 2

REV. NO.	DATE	DESCRIPTION



SITE PLAN
SCALE: 1/8" = 1'-0"

At Wailupe, Waikiki, Honolulu, Oahu, Hawaii
T.M.K.: (1) 3-8-01: 21
Address: 298 Wailupe Circle

EXHIBIT 4

UN	PERIODIC	
----	----------	--

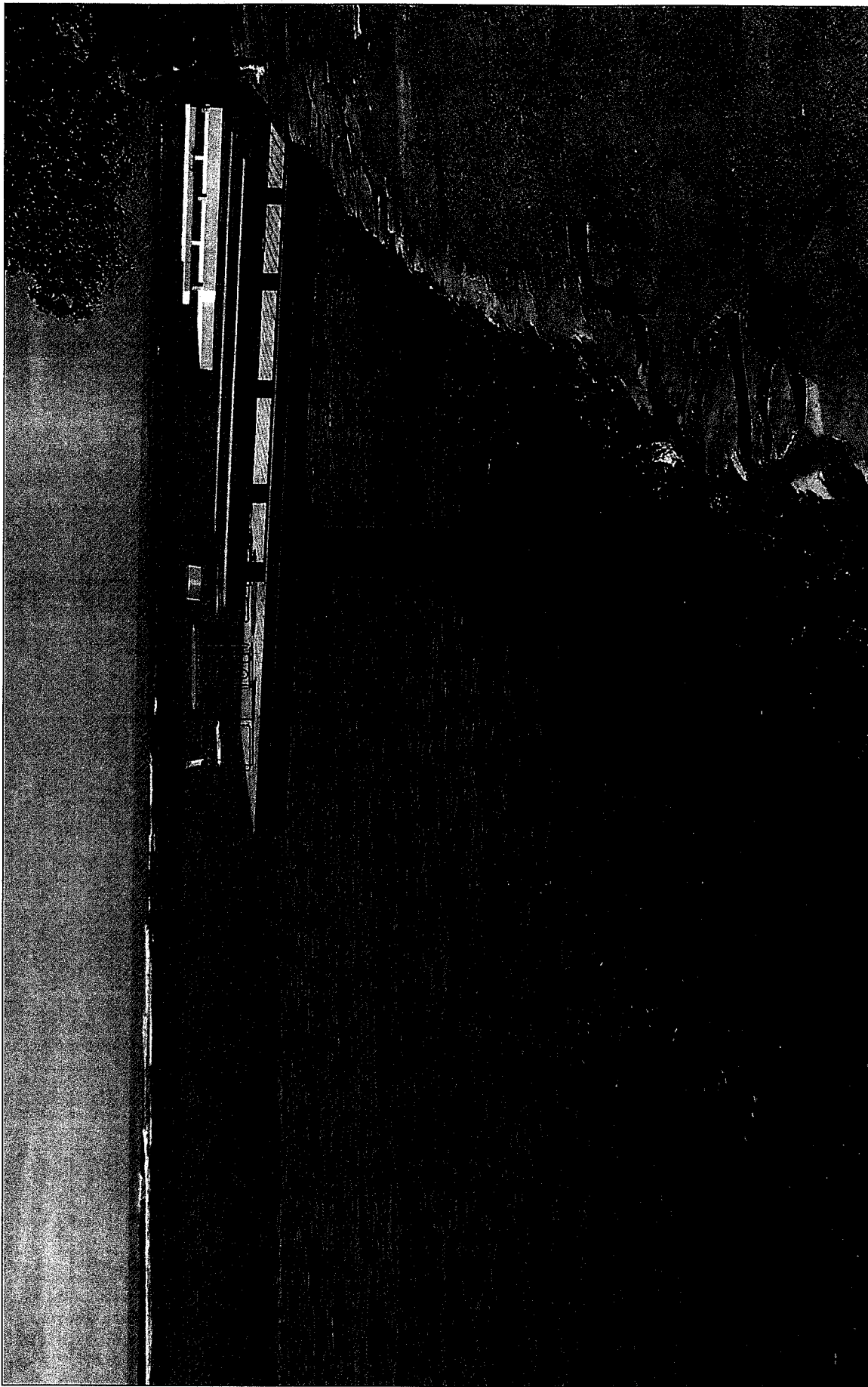


Figure 5
PIER AT ADJACENT PROPERTY,
292 WAILUPE CIRCLE, HONOLULU, HI

Conservation District Use Permit
Proposed Recreational Pier
Prepared for Mr. Kenton Eldridge
Prepared by Belt Collins Hawaii—April 2007

EXHIBIT 6